

1 THOMAS M. HERLIHY (SBN 83615)  
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10  
11 Attorneys for Defendants  
12 UNUM GROUP, UNUM LIFE INSURANCE  
13 COMPANY OF AMERICA, FIRST UNUM  
14 LIFE INSURANCE COMPANY OF AMERICA, and THE  
15 PAUL REVERE LIFE INSURANCE COMPANY

16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 ALEXANDER P. SOMMER, an individual, by }  
20 and through his Guardian ad Litem,  
21 CHRISTIAN SOMMER,

22 Plaintiff,

23 vs.

24 UNUM, UNUMPROVIDENT  
25 CORPORATION; UNUM PROVIDENT LIFE  
26 INSURANCE COMPANY OF AMERICA;  
27 FIRST UNUM LIFE INSURANCE  
28 COMPANY OF AMERICA; PAUL REVERE  
LIFE INSURANCE COMPANY,

Defendants.

} Case No.: C07-2846 SC

} DECLARATION OF JOHN T. BURNITE  
REQUESTING RECOVERABLE  
ATTORNEYS' FEES AND COSTS

} Specially Set For Submission on the  
Papers

} Ctrm. 1 (17<sup>th</sup> Floor)

1 I, John T. Burnite, declare:

2 1. I am an attorney at law duly admitted to practice in all courts in the State of  
3 California. I am an associate with the law offices of Kelly, Herlihy & Klein, LLP. Our office  
4 represents defendants UNUM Group f/k/a UnumProvident Corporation, Unum Life Insurance  
5 Company of America, First Unum Life Insurance Company of America, and The Paul Revere  
6 Life Insurance Company (herein "defendants") in the above-captioned matter. I am one of the  
7 attorneys responsible for the handling of this matter on behalf of defendants. I have personal  
8 knowledge of the facts to which I declare, and if called as a witness could competently and  
9 completely testify to them.

10 2. I submit this declaration in response to the Court's September 21, 2007 Order that  
11 defendants submit a statement of its attorneys' fees and costs incurred in this matter. Between  
12 May 1, 2007 and September 30, 2007, defendants will have incurred \$9,778.50 in attorneys' fees  
13 (47.7 hours at \$205.00 per hour) in this matter. Defendants' costs (first filing fee) are \$350.00.  
14 The Defendants' total amount of attorneys' fees and costs therefore is **\$10,128.50**.

15 3. Our firm bills our clients in this matter on a monthly basis with a detailed billing  
16 statement which includes: daily entries regarding legal work performed (with itemized activity  
17 descriptions and attorney identification), time spent on the matter (in 1/10th hour increments),  
18 and the applicable hourly rate for each attorney. My hourly rate on this matter is \$205.00.

19 4. Redacted copies of monthly billing statements for this matter, from May 2007  
20 through August 2007, are attached collectively as Exhibit A. I have redacted portions of the  
21 statements regarding privileged communications with our clients and amongst defense counsel.

22 5. A billing statement for legal services rendered in September 2007 has not been  
23 prepared as of the signing of this declaration. However, I have reviewed my daily billing entries  
24 for September, 2007 and discuss those legal fees in paragraph 10, below.

25 6. In May 2007, defendants incurred \$1,435.00 for legal fees (7.0 hours at \$205.00  
26 per hour) in this matter. Legal services included review and analysis of plaintiff's complaint,  
27 legal research regarding plaintiff's RICO allegations; removal of the action to federal court; and  
28 analysis and preparation of pleading strategy. Defendants also incurred a \$350.00 filing fee.

7. In June 2007, defendants incurred \$758.50 for legal fees (3.7 hours at \$205.00 per hour) in this matter. Legal services pertained to communications with clients and drafting the answer to complaint.

8. In July 2007, defendants incurred \$41.00 for legal fees (.2 hours at \$205.00 per hour) in this matter. Legal services pertained to communications with clients.

9. In August 2007, defendants incurred \$1,373.50 for legal fees (6.7 hours at \$205.00 per hour) in this matter. Legal services included communications with clients, ADR review and selection issues, communications with plaintiff's counsel regarding same; and drafting the Joint Case Management Conference Statement.

10        10. Defendants will incur \$6,170.50 in legal fees for September, 2007 (30.1 hours at  
11 \$205.00 per hour). My daily billing entries for this matter in September, 2007 are: 9/6 (.1); 9/7  
12 (2.7); 9/13 (2.2); 9/7 (5.7); 9/18 (.8); 9/19 (.1); 9/20 (.7); 9/21 (1.8); 9/25 (1.7); 9/26 (3.7); 9/27  
13 (3.6); 9/28 (4.7); and 9/30 (2.3). The aforementioned charges include the following legal  
14 services: preparation for and attendance at the September 7, 2007 Case Management Conference;  
15 legal research and drafting defendants' certificate/memorandum for referral of related cases or  
16 *sua sponte* dismissal; review and analysis of plaintiff's response to Court's Order to Show  
17 Cause; communications with plaintiff's counsel; communications with clients; preparation for  
18 and attendance at the September 21, 2007 Case Management Conference; research and drafting  
19 the motion to dismiss and supporting declaration; detailed review and analysis of *Sommer I*  
20 pleading files re exhibits for motion to dismiss; draft statement of attorneys' fees.

21 I declare under penalty of perjury under the laws of the State of California and the United  
22 States of America that the foregoing is true and correct.

23 Executed the 1<sup>st</sup> day of October, 2007, at San Francisco, California.

  
John T. Burnite

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**EXHIBIT A**

**Kelly, Herlihy & Klein LLP**  
**44 Montgomery Street, Suite 2500**  
**San Francisco, CA 94104-4602**

[REDACTED], Esq.  
The Paul Revere Life Insurance Company  
18 Chestnut Street  
Worcester, MA 01608-1528

Page No. 1  
May 31, 2007  
Our File No. 2PRW1-27162  
Invoice No. 25296

Alexander P. Sommer v. Unum  
Group

**Current fees**

		<u>Hrs/Rate</u>	<u>Amount</u>
5/17/2007	JTB Review and analysis of first amended complaint; review and analysis of Ninth Circuit opinion; research various court dockets regarding: previous litigation; legal research regarding: RICO allegations and statute of limitation issues; analysis of removal issues; conference with Thomas M. Herlihy regarding: [REDACTED]	3.40 205.00/hr	697.00
5/22/2007	JTB Analysis of removal issues including responsive pleading strategy.	0.30 205.00/hr	61.50
5/25/2007	JTB Analysis of multiple removal grounds; review incoming documents from client regarding: [REDACTED]; telephone conference with Thomas M. Herlihy regarding: [REDACTED]	0.80 205.00/hr	164.00
5/29/2007	JTB Prepare notice of removal; telephone conference with Ms. [REDACTED] regarding: [REDACTED]	0.60 205.00/hr	123.00
5/31/2007	JTB Draft notice of removal; draft certification of interested parties; correspondence with Ms. [REDACTED] regarding: [REDACTED]; conference with Thomas M. Herlihy regarding: [REDACTED]	1.90 205.00/hr	389.50
<b>Total current fees</b>		<b>7.00</b>	<b>\$1,435.00</b>

<b>Attorney Summary</b>			
Name	Hours	Rate	Amount
John T. Burnite	7.00	205.00	\$1,435.00

**Kelly, Herlihy & Klein LLP  
44 Montgomery Street, Suite 2500  
San Francisco, CA 94104-4602**

[REDACTED], Esq.  
UnumGroup  
18 Chestnut Street  
Worcester, MA 01608-1528

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June 30, 2007  
Our File No. 2PRW1.27162  
Invoice No. 25554

Alexander P. Sommer v. Unum  
Group

**Current fees**

		Hrs/Rate	Amount
6/1/2007 JTB	Review court notices regarding removal.	0.20 205.00/hr	41.00
6/6/2007 JTB	Voicemail to and from Mr. Steelman regarding extension for responsive pleading.	0.20 205.00/hr	41.00
6/7/2007 JTB	Draft stipulation to extend time to file responsive pleading; correspondence to Mr. Steelman regarding same; review fax from plaintiff's counsel regarding above; serve and file stipulation.	0.70 205.00/hr	143.50
6/18/2007 JTB	Draft answer to complaint.	0.60 205.00/hr	123.00
6/19/2007 JTB	Draft answer to complaint.	1.00 205.00/hr	205.00
6/20/2007 JTB	Revise answer to complaint; conference with Ms. [REDACTED] regarding [REDACTED]	0.50 205.00/hr	102.50
6/21/2007 JTB	Conference with Ms. [REDACTED] regarding [REDACTED] revise affirmative defenses regarding answer; serve and file answer to complaint.	0.40 205.00/hr	82.00
6/28/2007 JTB	Review email from Ms. [REDACTED] regarding [REDACTED]	0.10 205.00/hr	20.50
<b>Total current fees</b>		<b>3.70</b>	<b>\$758.50</b>

	<b>Attorney Summary</b>		
Name		Hours	Rate
John T. Burnite		3.70	\$758.50

**Kelly, Herlihy & Klein LLP  
44 Montgomery Street, Suite 2500  
San Francisco, CA 94104-4602**

[REDACTED] Esq.  
 UnumGroup  
 18 Chestnut Street  
 Worcester, MA 01608-1528

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 July 31, 2007  
 Our File No. 2PRW1.27162  
 Invoice No. 25728

Alexander P. Sommer v.  
 Unum Group

**Current fees**

		<u>Hrs/Rate</u>	<u>Amount</u>
7/6/2007 JTB	Correspondence to Ms. [REDACTED] regarding [REDACTED]	0.10 205.00/hr	20.50
7/30/2007 JTB	Review email from client regarding [REDACTED]	0.10 205.00/hr	20.50
<b>Total current fees</b>		<b>0.20</b>	<b>\$41.00</b>

**Attorney Summary**

Name	Hours	Rate	Amount
John T. Burnite	0.20	205.00	\$41.00

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 August 31, 2007  
 Our File No. 2PRW1.27162  
 Invoice No. 25812

Alexander P. Sommer v.  
 Unum Group

**Current fees**

		<u>Hrs/Rate</u>	<u>Amount</u>
8/16/2007 JTB	Review court issued documents, including ADR requirements; telephone conference with Ms. [REDACTED] regarding [REDACTED]; prepare ADR stipulation; telephone conference with Mr. Steelman regarding same; fax stipulation to Mr. Steelman.	1.80 205.00/hr	369.00
8/17/2007 JTB	Voicemails to plaintiff's counsel regarding ADR stipulation; review ADR rules regarding stipulation.	0.20 205.00/hr	41.00
8/27/2007 JTB	Review court's notice regarding ADR selection; review email from Thomas M. Herlihy regarding [REDACTED]; review filing of ADR Stipulation; review notice of referral to Early Neutral Evaluation.	0.10 205.00/hr	20.50
8/28/2007 JTB	Prepare Case Management Conference report.	0.30 205.00/hr	61.50
8/29/2007 JTB	Draft Joint Case Management Conference Report; email to Ms. [REDACTED] regarding [REDACTED]; analysis of jury demand issue and timing regarding same.	2.70 205.00/hr	553.50
8/30/2007 JTB	Further analysis of draft Case Management Conference Statement; correspondence to plaintiff's counsel regarding same; correspondence to and from Ms. [REDACTED] regarding [REDACTED].	0.50 205.00/hr	102.50
8/31/2007 JTB	Telephone conferences (4x) with plaintiff's counsel regarding Case Management Conference Statement; review correspondence from plaintiff's counsel regarding proposed changes; revise same; correspondence to plaintiff's counsel regarding same; serve and file Case Management Conference Statement.	1.10 205.00/hr	225.50
<b>Total current fees</b>		<b>6.70</b>	<b>\$1,373.50</b>